

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KELLY LIBBY & HOOPES, P.C.,
and
GREENBERG TRAURIG LLP,

Plaintiffs,

vs.

ULICO CASUALTY COMPANY,

Defendant.

Civil Action No. 05-11859 (RCL)

**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR LEAVE TO SUBMIT REPLY BRIEF**

Defendant Ulico Casualty Company (“Ulico”) respectfully submits this memorandum of law in support of its motion for leave to file a reply brief in further support of its motion to dismiss. The reply brief demonstrates the inconsistent positions plaintiffs have taken in their complaint and in their opposition to Ulico’s motion. Among other things, although in their opposition to Ulico’s motion, plaintiffs contend that their claims are premised on independent alleged agreements with Ulico, in their complaint, plaintiffs have stated claims under a contract for insurance between Ulico and third parties. (*Compare* Opp’n Br. at 9 (“causes of action against Ulico are based on Ulico’s conduct and the separate agreements between Ulico and [plaintiffs] – not on the Ulico [Contract]”) *with* Compl. ¶ 61 (“Ulico has breached its obligations to pay Plaintiffs under the terms of the [Ulico Contract]”).)

Ulico’s short reply brief, attached as Exhibit A to Ulico’s motion for leave, is necessary to respond to the positions plaintiffs have taken that are inconsistent with their pleading. Ulico, therefore, respectfully seeks leave to submit the reply.

DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO SUBMIT
REPLY BRIEF

Dated: December 9, 2005

ULICO CASUALTY COMPANY,
By its attorneys,

/s/ Lon A. Berk

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